



AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 63RD LEGISLATURE; AND AMENDING SECTIONS 2-15-1028, 2-15-3113, 7-1-4121, 7-14-2826, 15-1-122, 15-1-216, 15-30-2604, 23-2-601, 23-2-614, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 30-18-117, 31-1-202, 32-1-402, 32-1-425, 32-9-103, 32-9-104, 50-40-103, 50-46-327, 61-11-102, 70-24-430, 76-4-125, 82-11-182, AND 90-3-1001, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender commission. (1) There is a public defender commission.

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness

and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) (a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to ~~46-18-113(1)(a) and (1)(b)~~ 46-8-113(1)(a) and (1)(b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in 47-1-201, a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be

reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members."

Section 2. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss board. (1) The livestock loss board shall:

- (a) process claims;
- (b) seek information necessary to ensure that claim documentation is complete;
- (c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;
- (d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;
- (e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;
- (f) prepare the annual budget for the board; and
- (g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

- (a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;
- (b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;
- (c) perform or contract for the performance of periodic program audits and reviews of program

expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110~~(2)(a)~~ and used for the purposes of 2-15-3111 through 2-15-3114."

Section 3. Section 7-1-4121, MCA, is amended to read:

"7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations on the government.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the presiding officer in a government adopting the commission-presiding officer form, the town presiding officer in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the

local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity that incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body ~~where~~ if one is appointed, carries out the duties of the records administrator.

(11) "Officer" means a person holding a position with a municipality that is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act that is adopted and approved by a municipality, ~~having and that has~~ effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203~~(3)~~(4).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department, ~~or~~ office, or political subdivision.

(19) "Public property" means any property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities."

Section 4. Section 7-14-2826, MCA, is amended to read:

"7-14-2826. Regulation of ferry operation -- penalties. (1) The board of county commissioners may make rules ~~for the government governing the operation~~ of ferries and prescribing:

- (a) how many boats must be kept, their character, and how they are propelled;
- (b) the number of individuals to be employed and rules for their supervision;
- (c) when and under what circumstances ferries may make trips in the nighttime;
- (d) who may be ferried free of toll;
- (e) in what cases of danger or peril a crossing is not to be made;
- (f) penalties for violation of rules;
- (g) the method of and preference in loading and crossing; and
- (h) how and by whom action may be brought to recover penalties.

(2) Subject to the rules, ferry operators shall make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of a ferry shall have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ferry operators shall keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day that compliance with this subsection is neglected, \$25 is forfeited, ~~to~~ and must be collected, except as provided in 3-10-601, for the use of the road fund of the

county."

Section 5. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the

amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of \$200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 6. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions -- uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in 15-30-2604(2)(c)(3)(c) and subsection (2)(b) of this section, a person who

fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 25, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) Except as provided in 15-30-2604~~(2)(c)~~(3)(c), the penalty imposed under subsection (2)(a) or (2)(b) of this section accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) Except as provided in 15-30-2604~~(2)(c)~~(3)(c), interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Except as provided in 15-30-2604~~(2)(c)~~(3)(c), interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or
 (ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) Except as provided in 15-30-2604, penalty and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

Section 7. Section 15-30-2604, MCA, is amended to read:

"15-30-2604. Time for filing -- extensions of time. (1) (a) Except as provided in subsection (1)(b), a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before April 15 following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(2) The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. An affidavit or affirmation must be attached to the return from the persons making the return verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve the taxpayer of the obligation to make a return required under this chapter. A taxpayer liable for a tax under this chapter shall pay a minimum

tax of \$1.

(3) (a) Subject to ~~subsection (3)(b)~~ subsections (3)(b) and (3)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(ii) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection (3)(b)(ii) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) A taxpayer that has a tax liability of \$200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.

(4) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(5) Except as provided in subsection (3)(c), the extension of time for filing a return is not an extension of time for the payment of taxes."

Section 8. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, unless the context requires otherwise, the following definitions apply:

(1) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

(2) "Certificate of title" means the document issued by the department of justice as prima facie evidence of ownership.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

(6) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(8) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(9) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(10) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(11) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana."

Section 9. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration

decals, certificates of title, and certificates of ownership do not apply to unregistered snowmobiles owned by nonresidents of Montana who either:

- (a) display visual proof that a nonresident temporary-use snowmobile permit has been purchased; or
- (b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 10. Section 23-2-631, MCA, is amended to read:

"23-2-631. Operation on public roads, streets, and highways. (1) A person may not operate a snowmobile upon a controlled-access highway or facility at any time. Snowmobile operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

- (a) the street, road, or highway is drifted or covered by snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible;
- (b) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or
- (c) operation has been authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) A snowmobile may not be operated upon a public street or highway when permitted to do so by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless equipped with a suitable braking device operable by either hand or foot.

(4) (a) Unless operation is otherwise allowed under subsection (4)(b) or (4)(c), the operator of a snowmobile who operates the snowmobile upon a public roadway, street, or highway when allowed to do so

under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 must have in possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical presence and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana."

Section 11. Section 23-2-634, MCA, is amended to read:

"23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, each snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Each person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Each person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in a manner so that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices ~~outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended,~~ used by the international snowmobile ~~industry~~ manufacturers association or with other standards for measurement of sound level that the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters;

or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent."

Section 12. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

Section 13. Section 23-2-642, MCA, is amended to read:

"23-2-642. Penalties. (1) The failure to display a current registration decal on a snowmobile is a misdemeanor, punishable by a fine in an amount equal to five times the applicable registration fee payable under 61-3-321.

(2) A person who violates any other provision of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 or a rule adopted pursuant to those sections shall pay a civil penalty of not less than \$15 or more than \$500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than \$50 or more than \$1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile meets the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 is subject to the penalty provisions of subsection (2) if the machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, each sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 constitutes a separate violation."

Section 14. Section 23-2-644, MCA, is amended to read:

"23-2-644. Deposit of funds from fines and forfeitures. All fines and forfeitures collected under 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, must be transmitted to the state, as provided in 15-1-504, for deposit in the state general fund."

Section 15. Section 30-18-117, MCA, is amended to read:

"30-18-117. Acceptance and distribution of electronic records by governmental agencies. (1)

Except as otherwise provided in 30-18-111~~(5)~~(6), each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1), the secretary of state, giving due consideration to security, may specify:

(a) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in 30-18-111~~(5)~~(6), this part does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures."

Section 16. Section 31-1-202, MCA, is amended to read:

"31-1-202. Definitions -- scope. (1) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services that are the subject matter of the retail installment transaction; if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and

for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money, things in action, or dwellings as defined in 15 U.S.C. ~~4602(v)~~ 1602(w).

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee; if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(iii) The term does not include a dwelling as defined in 15 U.S.C. ~~4602(v)~~ 1602(w).

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not

exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle; and that is primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under

a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association; if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits; if a separate identified charge is made for insurance and benefits; and includes the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

(c) This part does not apply to a transaction governed by Title 32, chapter 9, part 1."

Section 17. Section 32-1-402, MCA, is amended to read:

"32-1-402. When advertising as bank prohibited -- trade names restricted. (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department, may not:

(a) except for a student financial institution, as defined in 32-1-115, advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing ~~notices~~ notes or

certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

- (i) the place or office is the place or office of a bank or trust company;
- (ii) deposits are received there or payments made on checks; or
- (iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, or trust; or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, or trust; or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, except for a student financial institution, as defined in 32-1-115, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not transact business under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", "trust company", or "investment company" unless the department has granted a waiver. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

- (i) the organization is not acting as a financial institution; and
- (ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company,

partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner that leads the public to believe that its business is that of a bank, savings bank, or trust; or investment company and may enter any other order or decree as equity and justice require."

Section 18. Section 32-1-425, MCA, is amended to read:

"32-1-425. Definitions. For the purposes of 32-1-426 and 32-1-427, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting in, or constructive; executor; administrator; guardian; committee; conservator; curator; tutor; custodian; nominee; receiver; trustee in bankruptcy; assignee for the benefit of creditors; partner; agent; officer of any corporation, public or private; public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity."

Section 19. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

(4) "Bona fide third party" means a person that provides services relative to the origination of a residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

(6) "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business. The location is considered a branch office if:

- (a) the address of the location appears on business cards, stationery, or advertising used by the entity;
- (b) the entity's name or advertising suggests that mortgages are made at the location;
- (c) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or
- (d) the location is controlled directly or indirectly by the entity.

(7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

- (b) A person is presumed to control an entity if that person:
 - (i) is a director, general partner, or executive officer;
 - (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;
 - (iii) in the case of a limited liability company, is a managing member; or
 - (iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

(11) "Dwelling" has the meaning provided in 15 U.S.C. ~~1602(v)~~ 1602(w).

(12) "Entity" means a business organization, including a sole proprietorship.

(13) "Escrow account" means a depository account with a financial institution that provides deposit

insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

(14) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(15) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, ~~the director of the office of thrift supervision,~~ the national credit union administration, or the federal deposit insurance corporation.

(16) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

(17) "Individual" means a natural person.

(18) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

(19) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(20) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(21) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(22) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection (22), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

(23) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers

to advance funds, or commits to advancing funds for a mortgage loan applicant.

(24) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

- (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or
- (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C.

101(53D).

(25) "Mortgage servicer" means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; or

(b) meets the definition of "~~servicer~~ servicer" in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans.

(26) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage servicers, state-licensed mortgage loan originators, and registered mortgage loan originators.

(27) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

(28) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(29) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

- (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease,

rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections (29)(a) through (29)(d).

(30) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(31) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

(32) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

(33) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.

(34) "Trust account funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination.

(35) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership

interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization; regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(36) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 20. Section 32-9-104, MCA, is amended to read:

"32-9-104. Exemptions -- proof of exemption. (1) The provisions of this part do not apply to:

- (a) an entity that is an agency of the federal, state, or municipal government;
- (b) an entity described in 32-9-103(30)(a)(i) through (30)(a)(iii);
- (c) a registered mortgage loan originator when acting for an entity described in 32-9-103(30)(a)(i) through (30)(a)(iii);
- (d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;
- (e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;
- (f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;
- (g) an entity engaged solely in commercial real estate lending;
- (h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;
- (i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;
- (j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;
- (k) a person that performs only real estate brokerage activities and is licensed or registered pursuant

to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;

(l) a Montana-licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(m) a Montana-licensed certified public accountant or a Montana-licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

(2) The burden of proving an exemption under this section is on the person claiming the exemption. A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies. The department shall create a form for requesting an exemption.

(3) A person who is exempt from licensure under subsection (1) may register on the nationwide mortgage licensing system and registry as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See compiler's comment regarding contingent suspension.)"

Section 21. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, ~~including~~ The term includes but is not limited to taverns, night clubs, cocktail lounges, and casinos.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

(a) restaurants;

- (b) stores;
 - (c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;
 - (d) trains, buses, and other forms of public transportation;
 - (e) health care facilities;
 - (f) auditoriums, arenas, and assembly facilities;
 - (g) meeting rooms open to the public;
 - (h) bars;
 - (i) community college facilities;
 - (j) facilities of the Montana university system; and
 - (k) public schools, as provided for in 20-1-220 and 50-40-104.
- (4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- (5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.
- (6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.
- (7) "Place of work" means an enclosed room where one or more individuals work.
- (8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product, ~~including marijuana intended for medical use~~ and includes the use of marijuana for a debilitating medical condition as provided for in Title 50, chapter 46."

Section 22. Section 50-46-327, MCA, is amended to read:

"50-46-327. Prohibitions on physician affiliation with providers and marijuana-infused products providers -- sanctions. (1) (a) A physician who provides written certifications may not:

- (i) accept or solicit anything of value, including monetary remuneration, from a provider or marijuana-infused products provider;
- (ii) offer a discount or any other thing of value to a person who uses or agrees to use a particular provider or marijuana-infused products provider; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where ~~medical~~ marijuana to be used for a debilitating medical condition is cultivated or manufactured or where marijuana-infused products are made.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a provider or marijuana-infused products provider if the physician charges the person the same fee that the physician charges other patients for providing a similar level of medical care.

(2) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this chapter, or has not met the standard of care required under this chapter, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

(3) A violation of this section constitutes unprofessional conduct under 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the use of marijuana. The board of medical examiners shall notify the department of the sanction.

(4) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the ~~medical~~ use of marijuana for a debilitating medical condition."

Section 23. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by department. (1) Except as provided in subsection (8), the department shall create and maintain a central database of electronic files that includes an individual Montana driving record for each person:

- (a) who has been issued a Montana driver's license;
- (b) who does not have a driver's license from, or active driving record in, another jurisdiction and for whom the department receives a report of conviction of a traffic violation or an offense requiring suspension or revocation of the person's driver's license; and
- (c) whose driver's license or driving privileges have been suspended, revoked, canceled, or otherwise withdrawn by the department.

(2) An individual Montana driving record maintained under this section must include:

(a) personal information obtained from the application for a driver's license or a report of conviction;

(b) the person's driver's license number, license type, status, endorsements, restrictions, issue and expiration dates, and any suspensions, revocations, disqualifications, or cancellations that have been imposed against the person;

(c) all convictions reported to the department for the person; and

(d) traffic accidents in which the person was involved, except that a record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) (a) The department shall create and maintain a CDLIS driver record for each person who has been issued a Montana commercial driver's license or for whom a record of conviction, disqualification, or other licensure action has been taken for violations of any state or local law relating to motor vehicle traffic regulation, other than a parking violation, committed while operating a commercial motor vehicle.

(b) A CDLIS driver record maintained by the department must meet the requirements of 49 CFR 384.225.

(c) If the department receives notice that a person has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the CDLIS driver record.

(4) The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.

(5) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward, by electronic or other means, a report of the conviction to the motor vehicle administrator in the state in which the person is a resident or licensed.

(6) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

(7) (a) Except as provided in subsection (7)(b), a reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the reproduction of the information is signed by a named custodian of the record and the following certification appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102~~(5)~~(7), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed:.....

(Print Full Name)

(b) An order, record, or paper generated from the department's central database of electronic files of individual Montana driving records may be certified electronically by the generating computer. The certification must be a certification of the order, record, or paper as it appeared on a specific date.

(c) A court, an office of a clerk of court, or an attorney licensed to practice law in this state may receive and use a computer-generated individual Montana driving record as evidence without further foundation when:

(i) the individual Montana driving record is electronically transmitted from the department's central database of electronic individual Montana driving records to a department-authorized terminal device maintained by the court, the office of the clerk of court, or the attorney; and

(ii) the judge, an officer of the court, or the attorney certifies that the record was not altered in any way.

(8) The department may remove any individual Montana driving record from the active database of electronic files maintained under this section if there has been no change in license status on or additional reports of conviction to the record in the immediately preceding 16 years. Any individual driving record removed must be retained elsewhere by the department as an inactive record in an electronic storage device that is searchable and retrievable."

Section 24. Section 70-24-430, MCA, is amended to read:

"70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the

place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of ~~30-9A-604~~ 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the

remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes."

Section 25. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application -- land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104~~(6)(j)~~(6)(k) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may

be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 26. Section 82-11-182, MCA, is amended to read:

"82-11-182. (Effective on occurrence of contingency) Liability for carbon dioxide during injection.

(1) Until the certificate of project completion is issued pursuant to 82-11-183(1) and title to the stored carbon dioxide and geologic storage reservoir is transferred to the state pursuant to 82-11-183(8)(7), the geologic storage operator is liable for the operation and management of the carbon dioxide injection well, the geologic storage reservoir, and the injected or stored carbon dioxide.

(2) Bond or other surety furnished pursuant to 82-11-123(1)(f) must be adequate to meet the requirements of subsection (1).

(3) For the purposes of 82-11-183 and this section, "title" includes title to the geologic storage reservoir and the stored carbon dioxide."

Section 27. Section 90-3-1001, MCA, is amended to read:

"90-3-1001. Purpose -- definition. (1) The purpose of establishing a research and commercialization special revenue account in 90-3-1002 and 90-3-1003 is to:

(a) provide a predictable and stable source of funding for research and commercialization projects conducted in the state that demonstrates to both private and public sources, including federal research granting agencies, that Montana recognizes the important contributions that research and commercialization endeavors offer to the state's basic industries;

(b) expand and strengthen research efforts for the state's basic industries to increase their economic impact on the state's economy;

(c) expand research efforts into areas beyond the scope of the state's basic industries to diversify and strengthen the state's economic security through the creation of technology-based operations and long-term quality jobs; and

(d) pay costs of administering this part pursuant to 90-3-1003.

(2) As used in 90-3-1002 and 90-3-1003, "research and commercialization center" means the campuses of the university of Montana or Montana state university, tribal colleges, ~~colleges of technology~~, community colleges, agricultural research centers, or a private laboratory or research center."

Section 28. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code

Annotated contained in material enacted by the 63rd legislature.

- END -

I hereby certify that the within bill,
SB 0071, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 71
INTRODUCED BY M. TROPILA
BY REQUEST OF THE CODE COMMISSIONER

AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 63RD LEGISLATURE; AND AMENDING SECTIONS 2-15-1028, 2-15-3113, 7-1-4121, 7-14-2826, 15-1-122, 15-1-216, 15-30-2604, 23-2-601, 23-2-614, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 30-18-117, 31-1-202, 32-1-402, 32-1-425, 32-9-103, 32-9-104, 50-40-103, 50-46-327, 61-11-102, 70-24-430, 76-4-125, 82-11-182, AND 90-3-1001, MCA.